

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) 2:02-cr-0418-GEB
11 Plaintiff,)
12 v.) ORDER
13 FERNANDO LOPEZ-CUEVAS and ANTELMO)
14 ONTIVEROS,)
15 Defendants.)

The sentences of Defendants Fernando Lopez-Cuevas and Antelmo Ontiveros were remanded for further proceedings in light of United States v. Booker, 125 S. Ct. 738 (2005), and United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc).¹

The initial remand question the district court is required to answer is whether the sentence previously imposed for each defendant "would have been materially different had the district court known that the Guidelines were advisory. . . ." *Ameline*, 409 F.3d at

¹ Although this action was remanded effective November 29, 2005, the remand was not brought to my attention until June 13, 2006, even though the record reflects that the government filed a document titled "Government's Position Regarding Limited Remand Procedures Pursuant to United States v. Ameline" on March 7, 2006.

1084. “[T]he ‘views of counsel, at least in writing,’ should be obtained” before this question is answered. *Id.* at 1085 (quoting United States v. Crosby, 397 F.3d 103, 120 (2d Cir. 2005)). Accordingly, each party’s counsel is requested to file a brief that provides an answer for this question no later than July 19, 2006.

IT IS SO ORDERED.

Dated: June 19, 2006

/s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
United States District Judge